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FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC PRIORITY 3270

C O N F I D E N T I A L SECTION 1 OF 3 BANGKOK 22496

E.O. 11652: GDS

TAGS: PFOR, EAID, TH, US

SUBJECT: NEGOTIATIONS ON AID BILATERAL

REF: BANGKOK 21406

SUMMARY: THE THAI AND AMERICAN NEGOTIATING TEAMS MET OCTOBER 22 AND RESOLVED ALL OUTSTANDING DIFFERENCES EXCEPT FOR THE STATUS OF THE AID DIRECT HIRE SUPPORTING STAFF. WE PROPOSE ELIMINATING SPECIFIC REFERENCE TO THIS CATEGORY OF PERSONNEL FROM THE BILATERAL AGREEMENT PER SE AND FUSING THE REMAINING USOM STAFF INTO THE EMBASSY. END SUMMARY.

1. USING THE THAI DRAFT TEXT AS A BASIS, THE NEGOTIATORS AGREED, EXCEPT AS NOTED BELOW, ON THE FOLLOWING CLEAN DRAFT TEXT OF THE NEW BILATERAL AGREEMENT.

BEGIN TEXT

ECONOMIC AND TECHNICAL COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA.

THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

HAVING IN MIND THE FRIENDLY RELATIONS EXISTING BETWEEN
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THE TWO COUNTRIES AND THEIR PEOPLES,

DESIRING TO ENHANCE THOSE RELATIONS,

CONSIDERING THEIR COMMON INTEREST IN CULTIVATING AND
ENCOURAGING THE ECONOMIC AND TECHNICAL DEVELOPMENT OF
THEIR RESPECTIVE COUNTRIES, AND

RECOGNIZING THE BENEFITS TO BE DERIVED BY BOTH COUNTRIES
FROM CLOSER ECONOMIC AND TECHNICAL COOPERATION,

HAVE AGREED AS FOLLOWS:

ARTICLE I

THE CONTRACTING PARTIES SHALL ENDEAVOR TO COOPERATE AND
TO ASSIST EACH OTHER IN ECONOMIC AND TECHNICAL MATTERS.
ON THE BASIS OF AND WITHIN THE FRAMEWORK OF THIS
AGREEMENT, FURTHER ARRANGEMENTS WILL BE CONCLUDED BETWEEN
THE TWO GOVERNMENTS REGARDING INDIVIDUAL PROJECTS AND
PROGRAMMES.

ARTICLE II

ON THE BASIS OF ARRANGEMENTS TO BE CONCLUDED UNDER
ARTICLE I OF THIS AGREEMENT, THE GOVERNMENT OF THE
UNITED STATES OF AMERICA SHALL ENDEAVOR TO ASSIST
THE GOVERNMENT OF THE KINGDOM OF THAILAND, SUBJECT TO MUTUAL
AGREEMENT, IN DEVELOPMENT ACTIVITIES, PROJECTS AND PROGRAMMES
IN PRIORITY AREAS.

ARTICLE III

ON THE BASIS OF THE ARRANGEMENTS TO BE CONCLUDED UNDER
ARTICLE I OF THIS AGREEMENT, THE GOVERNMENT OF THE
KINGDOM OF THAILAND SHALL, AS SPECIFIED IN A SEPARATE
AGREEMENT, PROVIDE SUPPORT FOR THE OPERATION OF DEVELOPMENT
ACTIVITIES, PROJECTS AND PROGRAMMES.

ARTICLE IV

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THE TWO GOVERNMENTS SHALL ALSO COOPERATE IN THE TRAINING
OF THIRD-COUNTRY NATIONALS IN THE KINGDOM OF THAILAND
IN ACCORDANCE WITH ARRANGEMENTS TO BE MUTUALLY AGREED
UPON BY THE PARTIES CONCERNED.

ARTICLE V

WITH RESPECT TO EXPERTS AND TECHNICIANS WHO, NOT BEING

CITIZENS OF OR NORMALLY RESIDENT IN THAILAND, ARE ASSISTING IN THE IMPLEMENTATION OF ARRANGEMENTS UNDER ARTICLE I OF THIS AGREEMENT, THE GOVERNMENT OF THE KINGDOM OF THAILAND SHALL:

1. PERMIT SUCH PERSONNEL, AS WELL AS THEIR SPOUSES AND CHILDREN TO ENTER, LEAVE, AND SOJOURN IN THE COUNTRY FOR THE DURATION OF THEIR ASSIGNMENT IN THAILAND, AND EXEMPT THEM FROM ALIEN REGISTRATION REQUIREMENTS;
2. LEAVY NO TAXES OR OTHER FISCAL CHARGES ON ANY EMOLUMENTS OR ALLOWANCES PAID TO SUCH PERSONNEL FOR THEIR SERVICES IN CONNECTION WITH THE INDIVIDUAL PROJECTS OR PROGRAMMES ESTABLISHED UNDER ARTICLE I OF THIS AGREEMENT;
3. PERMIT SUCH PERSONNEL TO IMPORT, FREE FROM DUTIES AND TAXES, HOUSEHOLD GOODS AND PERSONAL EFFECTS, INCLUDING ONE MOTOR VEHICLE PER EXPERT OR TECHNICIAN, WITHIN SIX MONTHS OF THEIR INITIAL ARRIVAL TO TAKE UP THEIR POSTS IN CONNECTION WITH THE IMPLEMENTATION OF A PROJECT OR PROGRAMME. SUCH GOODS SHALL BE SUBJECT TO PAYMENT OF LOCAL CUSTOMS DUTIES AND TAXES IF THEY ARE SUBSEQUENTLY SOLD OR TRANSFERRED WITHIN THAILAND TO INDIVIDUALS OR ORGANIZATIONS NOT ENTITLED TO EXEMPTION FROM SUCH DUTIES AND TAXES OR SIMILAR PRIVILEGES. A SEPARATE ARRANGEMENT WILL BE MADE TO DEFINE ITEMS OF HOUSEHOLD GOODS AND PERSONAL EFFECTS;
4. GRANT SUCH PERSONNEL CERTAIN FACILITIES REGARDING THE IMPORT OF MEDICAMENTS, FOODSTUFFS, BEVERAGES AND OTHER CONSUMABLE GOODS WITHIN THE LIMIT OF THEIR PERSONAL AND HOUSEHOLD REQUIREMENTS AS SPECIFIED IN A SEPARATE ARRANGEMENT;

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5. ISSUE TO SUCH PERSONNEL AN IDENTIFICATION DOCUMENT WHICH WILL ENSURE THAT APPROPRIATE AUTHORITIES WILL ACCORD NECESSARY FACILITIES TO THEM IN THE PERFORMANCE OF THEIR FUNCTIONS.

ARTICLE VI

(SEE DISCUSSION BELOW.)

ARTICLE VII

1. THIS AGREEMENT SHALL ENTER INTO FORCE ON THE DATE OF SIGNATURE. THEREUPON IT SHALL REPLACE AND TERMINATE THE ECONOMIC AND TECHNICAL COOPERATION AGREEMENT SIGNED AT BANGKOK ON SEPTEMBER 19, 1950, EXCEPT THAT THE PROVISIONS RELATING TO THE SPECIAL ACCOUNT ESTABLISHED PURSUANT TO SECTION 1 OF THE ANNEX TO THAT AGREEMENT SHALL REMAIN IN EFFECT FOR A PERIOD OF NOT MORE THAN NINETY DAYS AFTER THE SIGNING OF THIS AGREEMENT DURING WHICH PERIOD THERE SHALL BE A FINAL ACCOUNTING AND SETTLEMENT OF THAT ACCOUNT.

2. THIS AGREEMENT SHALL REMAIN IN FORCE FOR FIVE YEARS AND THEREAFTER UNTIL NINETY DAYS AFTER THE RECEIPT BY ONE CONTRACTING PARTY OF NOTICE FROM THE OTHER THAT IT WISHES TO TERMINATE THE AGREEMENT. THE NOTICE OF TERMINATION SHALL BE TRANSMITTED THROUGH THE DIPLOMATIC CHANNEL.

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3. ALL PROJECTS AND PROGRAMMES WHICH HAVE STARTED PRIOR TO THE TERMINATION OF THIS AGREEMENT SHALL, AFTER THE TERMINATION THEREOF, REMAIN SUBJECT TO ITS PROVISIONS UNTIL THE COMPLETION OF THE SAID PROJECTS OR PROGRAMMES.

END TEXT

2. COMMENT: THE SOLE REMAINING STICKING POINT IN THE NEGOTIATIONS IS ARTICLE VI OF THE THAI DRAFT WHICH COVERS

PRIVILEGES AND IMMUNITIES FOR THE "U.S. TECHNICAL SUPPORTING STAFF". ALTHOUGH NEVER PRECISELY DEFINED BY EITHER SIDE, WE HAVE USED THIS TERM IN OUR DISCUSSIONS WITH THE THAI TO APPLY GENERALLY TO USG DIRECT HIRE AMERICAN STAFF ENGAGED IN USOM ACTIVITIES SUCH AS EXECUTIVE DIRECTION, PROGRAMMING, PROJECT MONITORING, ACCOUNTING, AND OTHER SUPPORT FUNCTIONS. ARTICLE VI AS PROPOSED BY THE THAI READS: "THE GOVERNMENT OF THE KINGDOM OF THAILAND SHALL GRANT TO MEMBERS OF THE U.S. TECHNICAL SUPPORT STAFF, THE TOTAL NUMBER OF WHICH SHALL BE AGREED UPON BY THE TWO GOVERNMENTS, THE SAME PRIVILEGES AND ADVANTAGES AS THOSE ENJOYED BY THE EXPERTS AND TECHNICIANS UNDER ARTICLE V."

3. THE THAI ARE UNWILLING TO STATE PUBLICLY IN THE AGREEMENT THAT THE MEMBERS OF THIS SUPPORT STAFF CAN BE CONSIDERED AS PART OF THE U.S. DIPLOMATIC MISSION. THEY CITE THE AGREEMENT WITH THE JAPANESE WHICH LUMPS THE SUPPORT STAFF WITH THE TECHNICIANS AND EXPERTS. THEY ALSO POINT OUT THAT THEY ARE UNDER CONSIDERABLE PRESSURE TO PARE DOWN ALL FOREIGN MISSIONS. THEY FURTHER INDICATED THAT THEY ARE CONCERNED ABOUT CREATING PRECEDENTS THAT WOULD DISADVANTAGE THEM WHEN IT COMES TO HOLDING THE LINE ON THE NUMBERS OF CHINESE AND PERHAPS ALSO SOVIET DIPLOMATS.

4. AS A COMPROMISE, THE THAI OFFERED TO ENTER INTO AN UNWRITTEN "GENTLEMEN'S AGREEMENT" THAT WOULD PERMIT UP TO SIX SENIOR USOM PERSONNEL TO APPEAR ON THE PRINTED DIPLOMATIC LIST AT EMBASSY DISCRETION (AS OPPOSED TO THE PRESENT TWO), BUT WOULD LUMP ALL THE REST IN WITH THE TECHNICIANS AND EXPERTS COVERED IN THAI ARTICLE I (ARTICLE IV IN THE U.S. VERSION). WE EXPLAINED AT LENGTH THE CLEAR UNACCEPTABILITY CONFIDENTIAL

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OF THIS DICHOTOMY IN TERMS OF TREATING VARIOUS AID OFFICERS DIFFERENTLY, AS WELL AS TREATING SOME USOM DIRECT HIRE PERSONNEL DIFFERENTLY FROM OTHER U.S. MISSION PERSONNEL. NO AMOUNT OF EXPLANATION OF AID'S INTEGRAL NATURE AS PART OF THE DEPARTMENT OF STATE BUDGED THE THAI ON THIS POINT. THE THAI SIDE MANIFESTED CONSIDERABLE UNWILLINGNESS TO COUNTENANCE MORE THAN SIX "TECHNICAL SUPPORTING" STAFFERS WITH DIPLOMATIC STATUS WORKING ON AID MATTERS.

5. AS A POSSIBLE WAY TO BREAK THE DEADLOCK, THE ECONOMIC COUNSELOR SUGGESTED TENTATIVELY THE IDEA OF LEAVING OUT ALTOGETHER THE THAI ARTICLE VI. (BY IMPLICATION THIS COULD LEAVE THOSE MEMBERS OF THE USOM STAFF NOT SPECIFICALLY ON THE DIPLOMATIC LIST UNDER THE EMBASSY'S VIENNA CONVENTION UMBRELLA ALONG WITH DEA, GAO, RED, USIS, VOA, FBIS, SA, AND AEHA.) THE THAI ACKNOWLEDGED THAT THE GERMAN

AGREEMENT OMITTED ANY SPECIFIC MENTION OF THE GERMAN EMBASSY'S "TECHNICAL SUPPORTING" STAFF. BUT THEY ALSO POINTED OUT THAT THE GERMANS HAD ONLY THREE OFFICIALS (WHO ARE ON THEIR DIPLOMATIC LIST) WORKING ON AID MATTERS WITH AN ANNUAL AID PROGRAM OF \$3 MILLION. TO OUR QUERY, THE THAI ACKNOWLEDGED THAT THE GERMAN "EMBASSY" MUST BE SUPPORTING THE THREE OFFICIALS CLERICALLY AND ADMINISTRATIVELY.

6. WE DO NOT BELIEVE THAT THE THAI ARE SPOILING FOR A CONFRONTATION ON THIS ISSUE. ON THE CONTRARY, THEY APPEAR GENUINELY ANXIOUS TO REACH A SATISFACTORY AGREEMENT THAT DOES NOT, AT THE SAME TIME, GIVE THEM DIFFICULTIES IN TERMS OF PRECEDENTS THAT OTHER DONORS COULD CITE. THUS, THEY WOULD ALMOST CERTAINLY BE WILLING TO GIVE US MORE ON AN INFORMAL BASIS THAN IN WRITING. THIS FOLLOWS THE LONG TRADITION OF OUR MUTUAL SECURITY ENDEAVORS. ASSUMING THE BILATERAL IS SILENT ON THE PROBLEM, OUR INFERENCE IS THAT THE RTG WOULD CONSIDER THE ASSIGNMENT OF AID PERSONNEL TO BANGKOK (BEYOND THE SIX SENIOR PERSONNEL WHO WOULD HAVE DIPLOMATIC TITLES) AS AN INTERNAL EMBASSY STAFFING MATTER. CONVERSELY, IT IS CLEAR THAT THE THAI WILL BE OPPOSED TO ANY LANGUAGE IN THE NEW BILATERAL ITSELF ACCORDING FULL DIPLOMATIC PRIVILEGES AND IMMUNITIES TO ANY USOM DIRECT HIRE SUPPORT STAFF. WE THEREFORE BELIEVE DELETION OF ARTICLE VI TO BE THE MOST SATISFACTORY WAY TO RESOLVE THE PROBLEM FOR BOTH SIDES.
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7. IN THAILAND AS IN MANY OTHER COUNTRIES AROUND THE WORLD, THE EXACT IMMUNITY STATUS OF AN EMBASSY'S NONDIPLOMATIC PERSONNEL IS USUALLY MORE GENEROUS IN PRACTICE THAN IT IS IN WRITING. WE HAVE LONG HAD ORAL ASSURANCES THAT ALL CIVILIAN U.S. MISSION PERSONNEL WHO DO NOT HAVE DIPLOMATIC TITLES WILL BE ACCORDED THE FUNCTIONAL EQUIVALENT OF DIPLOMATIC IMMUNITY SHOULD THE NEED ARISE. UNDER SUCH CIRCUMSTANCES, USOM PERSONNEL IN EXCESS OF SIX WOULD HAVE NEITHER MORE OR LESS THAN THE NONDIPLOMATIC STAFF OF THE EMBASSY AND ALL THE OTHER USG AGENCIES REPRESENTED IN THAILAND.

8. THE THAI RAISED A QUESTION ABOUT PARTICIPATING AGENCY (PASA) PERSONNEL WHICH SERVES TO HIGHLIGHT A DEFINITIONAL PROBLEM. THIS ARISES FROM ATTEMPTS TO DIVIDE THE AID POPULATION - FOR PURPOSES OF PRIVILEGES/IMMUNITIES - INTO TWO DISTINCT GROUPS, (A) "TECHNICAL SUPPORTING STAFF" AND (B) "EXPERTS AND TECHNICIANS". AT PRESENT THERE ARE FIVE PASA EMPLOYEES (3 CUSTOMS; 1 COAST GUARD; 1 GEOLOGICAL SURVEY) AS WELL AS TWO AID DIRECT-HIRE (NARCOTICS TRAINING ADVISORS) PERFORMING ADVISORY DUTIES UNDER US/RTG PROJECT AGREEMENTS. NOTWITHSTANDING OUR CONSISTENT POSITION THAT ALL DIRECT-HIRE USG PERSONNEL MUST BE GIVEN EQUAL TREATMENT UNDER THE AGREEMENT, WE HAD TO ACKNOWLEDGE THE LOGIC OF THE THAI CONTENTION THAT PASA PERSONNEL COULD MORE LOGICALLY BE CLASSIFIED AS "EXPERTS AND TECHNICIANS" THAN AS SUPPORTING STAFF. THIS PROBLEM MIGHT BE RESOLVED BY SECURING RTG INFORMAL APPROVAL TO

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PERMIT PRESENT PASA EMPLOYEES TO COMPLETE THEIR ASSIGNMENTS. FUTURE ASSIGNMENT OF PASA EMPLOYEES WOULD THEN HINGE ON INDIVIDUAL PROJECT NEGOTIATIONS. IN THE RECENT MEETING WE POINTED TO THE NEED FOR SOME TRANSITIONAL ARRANGEMENT WHICH WOULD PROTECT PASA PERSONNEL CURRENTLY ASSIGNED FROM ANY ADVERSE CHANGE IN THEIR CURRENT STATUS VIS-A-VIS OTHER USOM PERSONNEL. THE THAI ACKNOWLEDGED THE NEED TO CONSIDER SOME EXCEPTION DURING THE TRANSITION FROM THE CURRENT TO A NEW BILATERAL.

9. THE THAI CONCERN ABOUT THE TOTAL NUMBER OF PERSONNEL IN THE "TECHNICAL SUPPORTING" CATEGORY TENDS TO ARISE ANY FUTURE FLEXIBILITY WE MAY HAVE MADE WITH RESPECT TO DESIGNATING ALL USG PERSONNEL, INCLUDING PASA EMPLOYEES, AS TECHNICAL SUPPORT STAFF MEMBERS. THE DTEC REPRESENTATIVE INDICATED THAT DTEC WOULD CONSIDER ALL PERSONNEL TO BE RECRUITED UNDER THE NEW TRANSFER OF TECHNICAL AND MANAGEMENT

SKILLS PROJECT TO BE EXPERTS AND TECHNICIANS. WE DID NOT DISPUTE THIS, BUT ONLY POINTED OUT THAT IT MAY BE DIFFICULT OR IMPOSSIBLE FOR THE RTG TO RECRUIT USG PERSONNEL FOR TTMS ACTIVITIES BECAUSE OF THE DENIAL OF DIPLOMATIC IMMUNITY.

10. CONSIDERING THE THAI'S RELUCTANCE TO CONSIDER USOM AS PART OF THE EMBASSY, IT IS IRONIC THAT SIX OF THE SEVEN PASA/AID EMPLOYEES WHO ARE IN THIS "NO MAN'S LAND" ARE IN THAILAND FOR ACTIVITIES WHICH ARE THE PRIMARY RESPONSIBILITY OF THE DEPARTMENT OF STATE/EMBASSY RATHER THAN AID/USOM, VIZ. FOR THE NARCOTICS ENFORCEMENT PROGRAM. ALTHOUGH WE HAVE NOT YET RAISED THIS POINT WITH THE THAI, THERE IS CLEARLY AS MUCH JUSTIFICATION FOR INCLUDING THEM UNDER THE EMBASSY UMBRELLA AS THERE IS FOR THE DEA STAFF'S STATUS. IF WE EXPERIENCE DIFFICULTY RESOLVING THE STATUS OF THESE NARCOTICS-RELATED "TECHNICIANS", IT MAY BE NECESSARY TO CONSIDER A MORE DIRECT SECONDMENT OF THE INDIVIDUALS TO THE EMBASSY, E.G. STATE DEPARTMENT DETAIL, PASA WITH DEA, ETC. ALTHOUGH NOT A REDUCTION IN THE REAL SENSE, THIS WOULD OF COURSE REDUCE THE NUMBER OF U.S. PERSONNEL ATTRIBUTED TO USOM UNDER THE BILATERAL AGREEMENT AND THE PROPOSED "GENTLEMAN'S AGREEMENT".

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11. THE EMBASSY AND USOM CONCLUDE THAT, GIVEN THE CLEAR UNACCEPTABILITY TO US OF THAI ARTICLE VI, THE BEST APPROACH IS TO DELETE IT AND ACCEPT THE THAI WILLINGNESS TO FOLD OTHER DIRECT HIRE USOM PERSONNEL INTO THE EMBASSY STAFF. DOING THIS SHOULD RESULT IN A QUICK AGREEMENT. IN THE FUTURE, WE WILL, OF COURSE, HAVE TO STRICTLY LIMIT USOM DIRECT HIRE PERSONNEL (IN EXCESS OF THE SIX WHO WILL BE ON THE DIPLOMATIC LIST) TO AUSTERE LEVELS TO AVOID RTG ACCUSATIONS OF BAD FAITH. WE BELIEVE A MAJOR RTG OBJECTIVE IS TO AVOID ESTABLISHING A PUBLIC PRECEDENT FOR PRIVILEGES AND IMMUNITIES FOR USG PERSONNEL WHICH OTHER AID DONORS COULD CITE. BY DELETING THAI ARTICLE VI WE ADMITTEDLY RUN A RISK OF FUTURE MISUNDERSTANDINGS, BUT THE RISK APPEARS ACCEPTABLY LOW AND IS ALMOST CERTAINLY THE BEST ARRANGEMENT WE COULD CONCLUDE WITH THE RTG.

12. PLEASE ADVISE.
WHITEHOUSE

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